In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 472

BERNARD S. GARRETT AND JOSEPH B. MORRIS,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Western District of Texas, petitioners were convicted of wilfully misapplying more than $189,000 in bank funds insured by the Federal Deposit Insurance Corporation, and of conspiracy to commit that offense (18 U.S.C. 656, 371). On May 18, 1967, they were sentenced to three years' imprisonment on each count, the sentences to run concurrently. The court of appeals affirmed (Pet. App. B).

There is no occasion for review. Contrary to petitioners' argument (Pet. 9), the proof clearly showed that they were controlling stockholders of the Marlin Bank whose funds they converted. The fact that the

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Continental Bank had financed petitioners' purchase of Marlin's shares and that petitioners had pledged most of the shares as collateral for Continental's loan (Tr. 99–100, 102, 109–112, 179–182) did not remove petitioners from their position of control, as evidenced by their ability immediately to have four of their friends appointed to the board of directors of the bank (see Pet. App. B, 3). The court of appeals' conclusion that controlling shareholders, who owe a fiduciary duty to the bank corporation, are within the terms of 18 U.S.C. 656 as persons "connected in any capacity" with the bank (Pet. App. B, 5–6), is plainly correct.

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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